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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,836

06/15/2007

Matthew Eric Smith

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NEW YORK, NY 10036

EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

03/29/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/593,836

Applicant(s)

SMITH ET AL.

Examiner

JAMES N. SMALLEY

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 16-28 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 16-26 is/are rejected.
- 8) ☒ Claim(s) 27 and 28 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-302)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 03, 2011 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 limits the annular flange being integral with the underside of the annular web. Examiner notes that claim 16 defines the annular web being connected to the bottom of the skirt by the hinge. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 16-22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arfert et al. US 4,793,510 in view of Irwin US 5,103,990.

Regarding claim 16, Arfert '510 teaches a receptacle (not shown; discussed in col. 3, lines 14-17), annular shoulder (22, 26), and a lid having a skirt (38), annular flange (36) and resilient hinge

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(unlabeled; located between 36 and 44 in Figure 4), which is snap-fitted onto the receptacle. Regarding tension, Examiner notes col. 5, lines 9-22, which teach residual tension when the closure is applied, contributing to sealing between (44) and (26). This inherently implies there is tension in skirt (38).

Regarding the three gas seals, Examiner notes the first seal occurs at flange 22, the second is between end face 44 and flange bottom 26, and the third is between (36) and (20) as discussed in col. 5, lines 19-22.

As applied, the reference fails to teach an annular web.

Irwin '990 teaches a closure for pressurized beverage containers, and furthermore teaches an annular web (34) which is the result of dome portion (28). The reference teaches, in col. 4, lines 13-24 that the dome (28) helps create sealing along the inside of the container mouth. Examiner notes that Arfert '510 teaches vents (57) at the corresponding location, but, notes in col. 7, lines 1-5 that these "may be" provided, if one desires additional venting aid, and thus they are not essential. Furthermore, because both references teach pressurized contents, the addition of a dome, such as that taught in Irwin '990 to the closure taught by Arfert '510 will not destroy Arfert '510.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Arfert '510, providing a dome as taught by Irwin '990, motivated by the benefit of additional sealing in the mouth. Accordingly, the resultant structure would create an annular web on Arfter '510, similar to portion (34) of Irwin '990.

Regarding claim 17, because the hinge of Arfert '510 is thin and formed of plastic, it is tearable.

Regarding claim 18, the lid of Arfert '510 is snap-fitted onto the container, as taught therein.

Regarding claim 19, Arfert '510 teaches a tab (66) which is upwardly rotated in order to break the seal. Examiner notes the claim does not limit that the closure itself is torn or otherwise damaged during the movement.

Regarding claim 20, Irwin '990 teaches the downwardly concave closure plate (28) is formed of a base portion (28) integral with an upwardly extending wall portion (30).

Regarding claim 21, with the modification made, the inner surface of the neck would be in sealing engagement with the outer surface of the closure plate.

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Regarding claim 22, Arfert '510 teaches an upwardly and outwardly extending surface (32) best seen in Figure 5.

Regarding claim 24, the annular flange (36, 44) of Arfert '510 is inherently deflected laterally by the side of the container neck because of the residual tension taught therein.

Regarding claim 25, Arfert '510 teaches a tab (66) which is upwardly rotated in order to break the seal. Examiner notes the claim does not limit that the closure itself is torn or otherwise damaged during the movement.

6. Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arfert et al. US 4,793,510 in view of Irwin US 5,103,990 as applied above to claims 21 and 25, and further in view of Dutt US 4,640,435.

Regarding claims 23 and 26, Arfert '510 as modified in view of Irwin '990 teaches all limitations substantially as claimed, but fails to teach a protuberance and recess in the container neck.

Dutt '435 teaches a recess (32) and protuberance (80) on sealing closure, for sealing within the neck of a container opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure and neck of Arfert '510, providing the protuberance and recess taught by Dutt '435, motivated by the benefit of additional sealing inside the neck.

Allowable Subject Matter

7. Claims 27 and 28 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 16-28 have been considered but are moot because the arguments do not apply to any of the references being used in the current rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 11 am - 7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES N SMALLEY/
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art Unit 3781